IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.MC.No. 1598 of 2006()

CC.442/2001 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER: DEFACTO COMPLAINANT:

ANITHA VARGHESE, VELLOOKULATHINU
VADAKETHIL HOUSE, KOTTARACAVU,
MAVELIKKARA.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENTS:

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. VARGHESE DANIEL, OTTATHENGIL HOUSE,
MUTTOM, HARIPPAD.

3. G. DANIEL, OTTATHENGIL HOUSE,
MUTTOM, HARIPPAD.

4. MARIAMMA DANIEL, OTTATHENGIL HOUSE,
MUTTOM, HARIPPAD.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1598 OF 2006

Dated this the 22nd day of November, 2006

ORDER

The petitioner is the de facto complainant in a prosecution under Secs.498A and 406 read with Sec.34 of the IPC. She has filed a complaint against her husband and her in-laws. Cognizance has been taken on the basis of a final report submitted by the Investigating Officer. Trial in the case is in progress. The prosecution did not examine C.Ws.12 to 14. They are a bank Manager, Sub Inspector of Police and also an attestor to the mahazar for seizure of a register. The learned Magistrate had closed the prosecution evidence without examining C.Ws.12 to 14.

2. After the 313 statement of the accused was recorded, the Prosecutor realising the inadequacy, filed Annexure-A1 application in which a request was made to permit him to examine C.Ws.12 to 14 by invoking the powers under Sec.311 of the Cr.P.C. The learned Magistrate, on the short ground that the application is highly belated, proceeded to reject the said request. Aggrieved by that course adopted by the learned

Magistrate, the petitioner/the de facto complainant has come before this Court.

3. The learned counsel for the petitioner submits that the court on its own must have insisted on examination of C.Ws.12 to 14 whose examination is absolutely essential to properly substantiate the case of the prosecution. Even assuming that there was contumacious laches on the part of the Prosecutor, the learned Judge ought to have noted that the real victim or the aggrieved is the petitioner herein and for that inadequacy on the part of the prosecution, the court should not have permitted the non-examination of the vitally relevant witnesses. At least, when later application was filed by the Prosecutor under Sec.311 of the Cr.P.C., the said request must have been allowed. The purpose for examination of C.Ws.12 to 14 has been explained to me. The application under Sec.311 of the Cr.P.C., a copy of which is produced as Annexure-A1 also indicates the reasons as to why examination of C.Ws.12 to 14 is essential.

4. The respondents/accused, though served, have not chosen to appear before this Court. The learned Prosecutor supports the prayer of the de facto complainant/the petitioner herein.

5. Having considered all the relevant inputs, I am certainly persuaded to agree that this is a fit case where the powers under Sec.482 of the Cr.P.C. can and ought to be invoked in favour of the petitioner and the prosecution to facilitate examination of C.Ws.12 to 14 as witnesses on the side of the prosecution. The omission to examine them earlier was really unjustified. According to me, the learned Magistrate must have insisted that those witnesses have to be examined. However, when the request, though belated, was made by the Prosecution, the learned Magistrate must have seen that the interests of justice eminently justified the insistence on examination of C.Ws.12 to 14.

6. This Crl.M.C. is, in these circumstances, allowed. The impugned order is set aside. The learned Magistrate shall take steps to examine C.Ws.12 to 14. The prosecution shall make every endeavour to get the summons served and make the witnesses available for examination at an early date.

Sd/-

(R. BASANT, JUDGE)

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//true copy// **P.S. To Judge**